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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

NO. 762

EDWARD R. WILLIAMS and JULIA LEE COX WILLIAMS for Themselves and Doing Business as "WILLIAMS ENGINEERING COMPANY", a Partnership, Petitioners,

v.

THE BABCOCK & WILCOX COMPANY and REPUBLIC STEEL CORPORATION

PETITIONERS' REPLY BRIEF

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Respondents' Brief in Opposition does not answer the Petitioners' charge of denial of due process; instead, Respondents have injected into the case a discussion of the merits, presumably for the purpose of convincing this Court that "in any event the results reached by the lower Courts were correct." This argument is not only out of place in this Court but it cannot possibly be considered in the face of this record.

The Petitioners are not requesting this Court to review the finding of the lower Courts on the basis of the evidence in the record; *the Petitioners are requesting this Court to review the decisions of the lower Courts because of Petitioners' evidence which was excluded from the record by the unusual short cut adopted by the trial Judge.*

Respondents have asserted that the case turns upon the "crucial finding" that "the point was never reached where B & W should have offered the process for licensing". The explanation of just how this finding was reached, demonstrates how thoroughly Petitioners' rights have been violated.

The pre-trial record (R. 59a-91a) is clear; the District Judge ruled that the case would be tried in stages and the first issue to be decided was whether "commercial success" had been achieved. At page 67a of the record Counsel for Petitioners requested the Judge to state the meaning of "commercial success". At that time the District Judge stated: "I mean worthwhile . . ." (68a) Later, in settling the pre-trial Order the District Judge stated: "We might as well take this case up in stages. In other words, take that part up first whether or not this thing was worth anything and if so, how much was it worth."

"Let's try that part, get it out of the way."

"*Mr. Gregg*: All right."

"*The Court*: Confine our case in the first instance to that. That is the ruling of the Court at pre-trial." (R. 83a)

The plaintiffs confined their case at the trial to this single issue and Counsel for Respondents by objection made certain of it. (R. 107a, 149a, 159a)

Plaintiffs had no opportunity to try the other issues raised in their Complaint. It was impossible for Plaintiffs to try the issue of conspiracy or lack of good faith of the defendants in performing the contract because plaintiffs had been denied pre-trial discovery of these

matters; the District Judge refused to pass upon plaintiffs' requests for discovery for the stated reason that conspiracy or bad faith was not pertinent to the issue of "commercial success" which was the first issue to be tried. (R. 84a)

After the plaintiffs' case had been closed, the trial Judge changed the meaning of "commercial success" to mean "operating a plant at a profit". (291a) The District Judge then proceeded to rule that under the contract the Respondents were justified in *not attempting* to license the process because "commercial success" had not been achieved; "commercial success" had not been achieved because the Respondents did not have a plant in operation at a profit (plaintiffs would readily have stipulated to this fact; although the pilot plant produced commercial grade steel it was too small for operation at a profit).

This finding by the District Court necessarily placed a construction upon the licensing contract as "contemplating the *development* of a process for licensing "when the clear wording of the contract "contemplated the *existence* of a process for licensing." The trial Court thus found an ambiguity in the contract and resolved it without giving the plaintiffs the opportunity to present relevant evidence to the subject, while the issue stated at pre-trial has never been decided.

These matters have been set forth not for the purpose of engaging in a discussion of the merits of the controversy on a Petition for Certiorari; but these facts have been recited to show the complete denial of a trial on the actual issues.

Although plaintiffs were unable to prove "commercial success" within the specific definition last imposed by the Court, the continuous casting process is extremely valuable to the small non-integrated companies. The defendants themselves stated ante litem motam that the process was ready for 15% of the annual steel production (R. 395a at 409a) but *refused* to license it until they had it developed for the large integrated companies, such as Inland Steel and until Republic, the third largest integrated company had a plant operating in production. Respondents' continued activity with the process is cogent evidence of its worth.

The lower Courts in denying the Petitioners' right to a trial on the other bases for relief set forth in the Complaint have deprived the Petitioners of extremely valuable property without due process of law.

Respondents in attempting to answer Petitioners' claim that the lower Court decided the estoppel issue as a matter of fact without hearing Petitioners' evidence, has asserted that the District Court assumed reliance by the plaintiffs but found no promises by the Defendants. (Brief p. 8) This assertion is difficult to reconcile with the decision of the Court of Appeals, because the Court of Appeals recited the representations by the defendants but found as a fact that there was no reliance by the plaintiffs. The situation becomes anomalous when it is realized that the plaintiffs' evidence on estoppel was not before either Court.

Finally, respondents urge this Court that the "mid-trial" "over-night" inspection of documents cured all of the defects caused by plaintiffs being denied pre-trial dis-

covery. There are several things wrong with this assertion. *First,* the documents withheld from the plaintiffs because of the special master's ruling, which would establish the conspiracy, *never* were tendered to Plaintiffs. Plaintiffs inadvertently discovered documents which disclosed that defendants had conducted negotiations, both prior and subsequent to the termination of the contract, with foreign interests toward the formation of an international corporation for the licensing of continuous casting; there were certain documents which showed that defendants were conducting licensing negotiations at the very time when defendants' verbal testimony was to the effect that their operations were a complete failure; there were documents which showed that the house counsel for B & W had submitted to Republic the procedure which the defendants should follow in terminating the plaintiffs' interests under the contract; and there were minutes of meetings between the officers of both companies which the defendants just arbitrarily withheld from the plaintiffs' pre-trial discovery.

Second, there were 653 of Defendants' Exhibits received in evidence. 37 of these Exhibits were shown to counsel for plaintiffs for the first time when they were offered in evidence. A trunk full of documents consisting of 583 Exhibits were offered in evidence at one time without specifications. Many of these Exhibits were voluminous documents; it would have taken counsel for Petitioners many weeks to read these documents without considering the time necessary to prepare a rebuttal to them. (R. 537a-549a)

It is significant that Respondents' brief does not deny the judicial irregularities on which the Petition

for Certiorari is based, but by innuendo seeks to create the impression that the controversy is for a worthless process.

Respectfully submitted,

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